



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/L3815/X/22/3300146

Jardene Nursery, Chalk Lane, Sidlesham, Chichester, West Sussex PO20 7LW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Agostinelli against the decision of Chichester District Council.
 - The application Ref SI/20/02785/ELD, dated 26 October 2020, was refused by notice dated 2 February 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of land and building for B1 and B8 purposes.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. Whilst both parties state that the application was submitted on 28 October 2020, I consider that for the purposes of this appeal, the date should be 26 October 2020 which is the date shown on the application form.
4. The application form does not include a description of the proposed use but refers to the use falling within Classes B1 and B8 of the Town and Country Planning (Use Classes) Order 1987. The Planning Practice Guidance advises that an application needs to describe precisely what is being applied for (not simply the use class).
5. Both parties in their submissions clarify that the use for which a certificate of lawfulness is sought is as a carpentry workshop. I shall consider the appeal on that basis, as s191(4) of the 1990 Act allows for modification of the description.

Main Issue

6. The main issue is whether the Council's decision to refuse an LDC was well-founded.
7. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit.

Reasons

8. For an LDC to be issued in respect of the appeal in accordance with s191(a), the appellant would need to show that the use of the appeal site changed to use as a carpentry workshop on or before 26 October 2010¹ and that the use then continued for at least 10 years without substantial interruption².
9. The appellant's case is that building 3 has been in use as a carpentry workshop since 2008. The onus is on the appellant to prove their case on the balance of probability. The evidence does not need to be independently corroborated in order to be relied upon, but it needs to be sufficiently precise and unambiguous.
10. Jardene Nursery is a former garden nursery and consists of a main dwelling and several outbuildings. This appeal relates to building 3. Planning permission was granted in 1996³ for the use of this building for the preparation and storage of animal feed.
11. The appellant's evidence to support the application includes a signed statutory declaration made by the appellant, and a number of letters from customers and suppliers. The appellant confirms that carpentry machinery was purchased in 2008 for the purpose of a carpentry workshop to be housed in building 3.
12. The letter from Trojan Timber Products dated 1 August 2019 states that timber was delivered to the nursery and that there has been a carpentry workshop there for over ten years. The letters from R Stubbs dated 9 August 2019, D Stubbs (undated), Stuart Agostinelli dated 16 August 2019, John Tabb (undated), Gilbert West dated 14 November 2019 and Carol Purnell dated 28 February 2021 indicate the existence of a carpentry workshop at Jardene Nursery. R Stubbs refers to her late husband going to the premises on several occasions and John Tabb refers to having kitchen units made "some 12 years ago and I visited him at his workshop on a couple of occasions in the course of the making of the units". Although these letters, indicate that a carpentry workshop has existed for over ten years, they are not in themselves sufficient to show a continuous 10-year period of use. Moreover, none of these letters place the carpentry workshop use in building 3. Thus, this evidence alone falls short of showing that the appeal building has been used as a carpentry workshop substantially uninterrupted over the requisite 10-year period prior to 26 October 2020.
13. I note the appellant's comments regarding no site visit taking place on 24 November 2020. I have also had regard to correspondence⁴ between the appellant and the Council regarding the confusion between building 3 and

¹ This being 10 years prior to the LDC application.

² Town and Country Planning Act 1990 s171B(3) "In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach".

³ Ref: 96/00070/REN

⁴ Appendix 4, Appellant's Statement of Case.

building 5. From the evidence⁵ it appears that in 2017 building 3 was being used for storage due to a roof collapse in a nearby refrigerator. I accept that the officer's site visit is a snapshot in time, however, whether or not the storage was temporary, no mention is made regarding a carpentry workshop taking place in building 3 at this time.

14. With reference to previous planning applications⁶ the Council considers that the appeal building was last used in November 2011 for the preparation and storage of animal feeds. The Council has drawn my attention to an officer's report dated 14 August 2015⁷ concerning a proposed change of use of buildings 4, 5 and 6. The report acknowledges the planning permission granted in 1996 for the use of building 3 "as a B2 use - for the preparation of pet food manufacturing". Whether or not the officer went inside the building, there is no indication that at this time building 3 was being used as a carpentry workshop. I give considerable weight to the officer's report as it was not prepared with this appeal in mind and thus can be taken at face value.
15. Taking the evidence submitted as a whole, I find it insufficiently precise and unambiguous to demonstrate, on the balance of probability, that whether or not the use of the appeal building changed to use as a carpentry workshop on or before 26 October 2010, that use continued substantially uninterrupted in excess of 10 years.

Conclusion

16. For the above reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of Building 3, Jardene Nursery, 16 Chalk Lane, Sidlesham, Chichester, West Sussex PO20 7LW was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR

⁵ Appendix 3, Appellant's Statement of Case, Officer's report planning Ref: S1/20/02785/ELD and Appendix LPA2, LPA Statement of Case, Officer's report planning Ref 21/02424/ELD.

⁶ 18/00166/PA3R, 21/02424/ELD & 15/01198/FUL.

⁷ Appendix LPA3, Officer's report for planning application Ref 15/01198/FUL.